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April 6, 2011

Hon. Esther Salas, U.S.M.J.
United States District Court, Newark
M.L. King Jr., Federal Building and Courthouse
50 Walnut Street
Newark, New Jersey 07102

Re: Germe, Lenus v. Edison Township, et al.
Civil Action No.: 2:10-cv-02528-PGS-ES
Our File No.: 1075-1208

Dear Magistrate Judge Salas:

In regard to the above-referenced matter, the undersigned represents defendant, Officer Capriglione. A motion for a Stay or for a Protective Order is presently returnable before your Honor. Pursuant to permission granted by your Honor at the recent telephone conference, please accept the within in further support of Defendant's motion for a stay or protective order.

This supplemental letter brief is necessitated by events which occurred *after* the completion of the briefing of the within motion, but before your Honor has ruled.

Defendants had previously represented that to their knowledge, no grand jury had been impaneled. This representation is now outdated. On March 28, 2011, officials of the Township of Edison received a "Subpoena to Testify before Grand Jury." A copy of same¹ is annexed hereto as Exhibit 6. The subpoena requires the production of documents as follows:

[a]ny and all records and documents, including correspondence and hearing transcripts, related to the investigations of the arrests of the following individuals:
Linus or Lenus Germe...

¹The Subpoena is redacted *only* as to the name of the particular official whose subpoena is being attached herewith.

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The subpoena commands an appearance on Friday, April 1, 2011 at the Grand Jury Room (1940) of the Martin Luther King Jr. Federal Bldg. & Courthouse at 9:45 a.m. The Assistant United States Attorney named on the Subpoena is Shana W. Chen of the United States Attorney's Office in Newark. Given the issuance of the subpoena, the circumstances surrounding the status of the federal investigation have materially changed.

Under the six factors enunciated by the Court in Walsh v. Securities, Inc. v. Cristo Property Management, Ltd., 7 F.Supp.2d 523, 526 (D.N.J. 1998), recent developments bear directly on several factors.

- With respect to factor one, the overlap of the issues, plaintiff opposed this defendant's motion for a stay claiming the Certification of Charles Sciarra represented, in only conclusory terms, that the federal investigation involved Mr. Germe. The within subpoena dispels any question and clearly demonstrates there is an ongoing and active federal investigation into the events surrounding the arrest of Lenus Germe on May 20, 2008 which investigation is identical to the subject matter of the within litigation.²
- With respect to factor two, the stage of the proceedings, plaintiff relies upon the lack of a grand jury proceeding in support of his position that a stay is inappropriate. Based upon the issuance of subpoenas for material which is identical to the subject matter of the within litigation, this factor fully weighs in favor of defendant's request for a stay or protective order. As cited by plaintiff, the greatest potential for self-incrimination occurs after indictment, and clearly, the grand jury proceedings is the last pre-cursor step in that regard. In Walsh, the Court granted a stay pre-indictment where subpoenas had been issued. Similar to Walsh, defendants submit this matter is appropriate for a stay.
- With respect to factor five, plaintiff has argued that "in the case at bar, it is unclear that there is even an indictment on the horizon..." (Pb at 9, docket entry #48). Certainly, the circumstances have changed and a grand jury has been impaneled and subpoenas issued. Defendants reiterate that a stay is appropriate.

²Defendants further rely upon the statement of plaintiff's expert by which plaintiff confirms the existence of a federal investigation into the same subject matter of the within litigation. Same is set forth fully in this defendant's reply brief at docket entry #49 at 2.

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Based upon these recent developments, defendant submits this supplemental letter brief in further support of his motion for a stay or limited protective order.

Respectfully submitted,

/s/ Lori A. Dvorak
LORI A. DVORAK

cc: Lennox S. Hinds, Esq.
Christopher Killmurray, Esq.
Alan J. Baratz, Esq.
Patrick J. Bradshaw, Esq.
John J. Kane, Esq.
Lawrence Y. Bitterman, Esq.

Attached hereto as Exhibit "6" is a true redacted copy of a subpoena served by the United States Attorney. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

/s/ Lori A. Dvorak

Exhibit 6

United States District Court

DISTRICT OF NEW JERSEY

TO:

SUBPOENA TO TESTIFY BEFORE GRAND JURY

Township of Edison
100 Municipal Boulevard
Edison, NJ 08817

SUBPOENA FOR:
☐ PERSON ☒ DOCUMENT(S) OR OBJECT(S)

YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date, and time specified below.

PLACE	ROOM
Martin Luther King Jr. Federal Bldg. & Courthouse 50 Walnut Street Newark, New Jersey 07102	Grand Jury Room 1040
	DATE AND TIME
	April 1, 2011 9:45 a.m.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):*

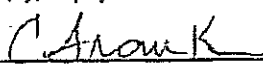

Any and all records and documents, including correspondence and hearing transcripts, related to the investigations of the arrests of the following individuals:

Linus or Lenus Germe; and
Michael Rebeck.

Please contact Special Agent Sean Quinn at (862) 849-6777 with any questions or to confirm date and time.

☐ Please see additional information on reverse.

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

CLERK	DATE
WILLIAM T. WALSH	03-28-2011
(By) Deputy Clerk 	
This subpoena is issued on application of the United States of America	NAME, ADDRESS AND PHONE NUMBER OF ASSISTANT U.S. ATTORNEY
PAUL J. FISHMAN United States Attorney	Shana W. Chen, AUSA  970 Broad Street United States Attorney's Office Newark, New Jersey 07102 (973) 353-6095

* If not applicable, enter "none"

FORM OBD-227
Revised April 2000

RETURN OF SERVICE ⁽¹⁾		
RECEIVED BY SERVER	DATE	PLACE
SERVED	DATE	PLACE
SERVED ON (NAME)		
SERVED BY		TITLE
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER ⁽²⁾		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p>		
<p>Executed on _____</p> <div style="display: flex; justify-content: space-between;"> Date Signature of Server </div>		
<p>_____</p> <p style="text-align: center;">Address of Server</p>		
<p>ADDITIONAL INFORMATION</p>		

(1) As to who may serve a subpoena and the manner of its service see rule 17(d), Federal Rules of Criminal Procedure, or Rule 45(c), Federal Rules of Civil Procedure.

(2) Fees and mileage need not be tendered to the witness upon service of a subpoena issued on behalf of the United States or an officer or agency thereof (Rule 45(c), Federal Rules of Civil Procedure, Rule 17(d), Federal Rules of Criminal Procedure) or on behalf of certain indigent parties and criminal defendants who are unable to pay such costs (28 USC 1825, Rule 17(b) Federal Rules of Criminal Procedure).